IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.499 OF 2004
IN
NOTICE OF MOTION NO.2497 OF 2002
IN
SUIT NO.3022 OF 2002

Kanta Raju Pillai & Another .. Appellants.
V/s.
Kalpana Chandrakant @ Chandrashekhar Pillai & Others .. Respondents.

Mr.Shailesh Shah i/b. Haresh Mehta & Co. for the appellants.
Mr.D.S. Chandrani for respondent Nos.1 and 2.
Mr.R.N. Kachare for Respondent Nos.3 to 6.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 4TH OCTOBER, 2004.

P.C. :

Heard Mr.Shailesh Shah, the learned counsel for the appellants, Mr.D.S. Chandrani, the learned counsel for respondent Nos.1 and 2 and Mr.R.N. Kachare, the learned counsel for respondent Nos.3 to 6.

2. The respondents through their counsel waives service.

3. The appeal is treated on board for hearing and is heard finally and disposed of at this stage.

4. Mr.Chandrakant Pillai died. He left some estate. The parties in the suit for administration of his estate are his legal heirs. On the notice of motion taken out by the plaintiffs, the learned motion Judge appointed the Court Receiver in respect of Shop No.4 as described in para 6 of the plaint with a power to the Court Receiver to take possession of the said shop and appoint an agent to be in possession on usual terms and conditions including payment of royalty and security. The learned motion Judge also directed the present appellant No.2 (original defendant No.2) to deposit an amount of Rs.1,45,000/- with the Court Receiver within four weeks from the date of the order. Dissatisfied with the order of the learned motion Judge passed on July 16, 2004, the original defendant Nos.1 and 2 have preferred this appeal.

5. The defendant No.2 (appellant No.2) in opposition to the notice of motion for appointment of Court Receiver in respect of Shop No.4, set up the case that he purchased that shop for Rs.12,000/- in the year 1969 and the said shop did not form part of the estate of deceased Chandrakant. The learned motion Judge did not believe the defendant No.2 and

we find ourselves in agreement with the view of the learned motion Judge. It is not in dispute that the defendant No.2 in the year 1969 was hardly 19 years of age. It is also not in dispute that he was student though according to him he was doing some part time job. There is nothing on record to indicate that the defendant No.2 possessed the means of Rs.12,000/- to purchase the subject shop. Prima facie, therefore, it appears that the shop was purchased by deceased Chandrakant in the name of defendant No.2. The said shop admittedly is lying vacant and the defendant No.2 is not carrying on any business. In view of these facts, the appointment of the Court Receiver as ordered by the learned motion Judge cannot be faulted.

6. With regard to the direction to the defendant No.2 to deposit an amount of Rs.1,45,000/-, we find from the available material on record that as a matter of fact the defendant No.2 withdrew an amount of Rs.1,11,080/- on maturity of fixed deposit and not Rs.1,70,000/- as observed by the learned motion Judge. The defendant No.2, in these circumstances, could have been directed to bring back 6/7 of the amount of Rs.1,11,080/-; 1/7 amount admittedly was the share of the defendant No.2.

7. We, accordingly, allow the appeal in part. The order of the learned motion Judge appointing Court Receiver in respect of Shop No.4 as described in para 6 of the plaint is maintained and no interference is called for with regard to the directions given by the learned motion Judge in that regard.

8. The defendant No.2 (appellant No.2) is directed to deposit a sum of Rs.95,210/- with the Court Receiver within a period of four weeks from today. The Court Receiver shall invest the said amount in fixed deposit in any nationalised bank initially for a period of three years, renewable thereafter for the same period until the disposal of the suit.

9. All observations made in the order are only for the consideration of the interim relief and shall not influence the decision of the suit on merits which obviously shall be decided on the basis of the evidence.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)